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17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**  
19 **SOUTHERN DIVISION**

20  
21 SECURED MAIL SOLUTIONS,  
22 LLC,

23 Plaintiff,

24 v.

25 ADVANCED IMAGE DIRECT,  
26 LLC, ET AL.

27 Defendants.  
28

Case No. SACV 12-01090 DOC(MLGx)  
(Consolidated for pretrial purposes with  
Case No. SACV 12-01118)

**STIPULATED PROTECTIVE ORDER**

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**STIPULATED PROTECTIVE ORDER**

WHEREAS, it may be necessary or desirable to take discovery of information which is believed to be confidential and proprietary by the holder thereof; and

WHEREAS, the parties hereto desire to obtain a protective order to prevent dissemination and unnecessary disclosure of such information on the public record;

IT IS HEREBY STIPULATED, and subject to the Court's approval, ORDERED, pursuant to Federal Rules of Civil Procedure, Rule 26(c), that the following provisions shall govern the handling of such confidential information and documents in these proceedings:

**1. LIMITATIONS**

The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 11, below, that this Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed when a party seeks permission from the court to file material under seal.

**2. DEFINITIONS**

**2.1 Party:** any party to this action, including all of its officers, directors, employees, in-house attorneys, consultants, retained experts, outside counsel, and associated support staff.

**2.2 Disclosure or Discovery Material:** all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

1           2.3    “Confidential”: for purposes of this Order, “ information designated  
2    “Confidential” shall mean all information or material produced for or disclosed in  
3    connection with this action to a Receiving Party that a Producing Party considers in  
4    good faith to contain confidential, commercially sensitive and/or proprietary  
5    information not otherwise known or available to the public. The following are  
6    examples of information that is not considered confidential: (a) advertising  
7    materials, (b) materials that on their face show that they have been published to the  
8    general public, or (c) documents that have been submitted to any governmental  
9    entity without request for confidential treatment. By way of non-limiting example,  
10   documents in one or more of the following categories may qualify for the  
11   “CONFIDENTIAL” designation: information (regardless of how generated, stored  
12   or maintained) or tangible things that qualify for protection under standards  
13   developed under F.R.C.P. 26(c); non-public, non-commercially sensitive technical  
14   information, including data sheets, product schematics, technical reference  
15   materials, and other non-public technical descriptions and/or depictions of the  
16   relevant technology.

17           2.4    “Confidential – Outside Attorneys’ Eyes Only”: for purposes of this  
18   Order, information designated “Confidential – Outside Attorneys’ Eyes Only” shall  
19   constitute or contain information that is confidential and/or sensitive in nature and  
20   that the Producing Party reasonably believes that the disclosure of such information  
21   may cause economic harm or competitive disadvantage to the Producing Party. By  
22   way of non-limiting example, documents in one or more of the following categories  
23   may qualify for the “Confidential – Outside Attorneys’ Eyes Only” designation: (i)  
24   commercially sensitive research and development, technical, testing or engineering  
25   documents (including CAD diagrams, manufacturing and engineering drawings,  
26   engineering notebooks, specifications, requirement documents, research notes and  
27   materials); (ii) commercially sensitive financial information (e.g., the number of  
28   products sold, total dollar value of sales products, sales forecasts, and profit

1 margins); (iii) commercial agreements, settlement agreements or settlement  
2 communications; (iv) customer lists, employee information, and other non-public  
3 information of similar competitive and business sensitivity; (v) commercially  
4 sensitive business and/or marketing plans, including, without limitation, trade  
5 secrets, pricing information, product development information; (vi) price lists  
6 and/or pricing information; (vii) information obtained from a non-party pursuant to  
7 a current non-disclosure Non-Disclosure Agreement (“NDA”); and (viii) non-  
8 public communications (including email) regarding topics relating to items (i)-(vii).

9       2.5    “Highly Confidential Code” or “Source Code”: extremely sensitive  
10 electronic or computer code such as software, firmware, source code, object code,  
11 listing files generated by compilers or assemblers, and intermediate files created  
12 during the build process, test programs and scripts, and source code or object code  
13 for associated tools (collectively “Source Code”). The following are **not** properly  
14 considered “Source Code”: documents, files, and data that are primarily intended  
15 for human review (including but not limited to word processing documents, text  
16 files, PowerPoint presentations, Excel spreadsheets, Access databases, PDF files,  
17 photographs, and the like or any files with file extensions such as doc, xls, txt, ppt,  
18 pps, pdf, jpeg, tiff, htm, html, maq, mdb, mov, MP3, wav, mpp, and pst). For  
19 avoidance of doubt, a document primarily intended for human review with an  
20 excerpt of electronic or computer code is not “Source Code.”

21       2.6    Producing Party: a Party or non-party that produces Disclosure or  
22 Discovery Materials in this action.

23       2.7    Receiving Party: a Party that receives Disclosure or Discovery  
24 Material from a Producing Party.

25       2.8    Designating Party: a Party or non-party that designates Disclosure or  
26 Discovery Materials produced in this action as “Confidential,” “Confidential –  
27 Outside Attorneys’ Eyes Only,” or “Highly Confidential Code.”  
28

1           2.9   Protected Material: any Disclosure or Discovery Material that is  
2 designated as “Confidential,” “Confidential – Outside Attorneys’ Eyes Only,” or  
3 “Highly Confidential Code.”

4           2.10   Outside Counsel: attorneys who are neither employees nor principles  
5 of a Party (and also for Plaintiff: attorneys who have no ownership interest or  
6 inventorship interest in Plaintiff or the patents-in-suit) but who are retained to  
7 represent or advise a Party in this action, as well as their support staff. For  
8 avoidance of doubt, Todd E. Fitzsimmons is not Outside Counsel under this  
9 Protective Order.

10          2.11   In-House Counsel: Up to three attorneys designated by (and also  
11 employed by that Party) that have signed the “Acknowledgement and Agreement to  
12 Be Bound” (Exhibit A). For avoidance of doubt, Todd E. Fitzsimmons may be In-  
13 House Counsel under this Protective Order.

14          2.12   Expert: a person with specialized knowledge or experience in a matter  
15 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
16 an expert witness or as a consultant in this action and who is not a past or a current  
17 employee of a Party or a Party’s competitor and who, at the time of retention, is not  
18 anticipated to become an employee of a Party or a Party’s competitor. “Expert” as  
19 defined in this paragraph and as used in this Order is applicable only for the  
20 purposes of disclosure of Protected Material.

21          2.13   Professional Vendors: persons or entities that provide litigation  
22 support services (e.g., photocopying; videotaping; translating; preparing exhibits or  
23 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)  
24 and their employees and subcontractors. This definition includes a professional  
25 jury or trial consultant retained in connection with this litigation.

26   3.    SCOPE

27          The protections conferred by this Order cover not only Protected Material (as  
28 defined above), but also any information copied or extracted therefrom, as well as

1 all copies, excerpts, summaries, or compilations thereof, plus testimony,  
2 conversations, or presentations by parties or counsel to or in court or in other  
3 settings that might reveal Protected Material.

4 4. DURATION

5 Even after the termination of this litigation, the confidentiality obligations  
6 imposed by this Order shall remain in effect until a Designating Party agrees  
7 otherwise in writing or a court order otherwise directs.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection.

10 Each Party or non-party that designates information or items for protection under  
11 this Order must take care to limit any such designation to specific material that  
12 qualifies under the appropriate standards. A Designating Party must take care to  
13 designate for protection only those parts of material, documents, items, or oral or  
14 written communications that qualify – so that other portions of the material,  
15 documents, items, or communications for which protection is not warranted are not  
16 swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or  
17 routinized designations are prohibited. If a Receiving Party believes that items  
18 designated for protection do not qualify for the level of protection indicated, the  
19 Receiving Party shall request that the Producing Party re-designates the items in  
20 accordance with Section 6, below. If it comes to a Party's or a non-party's attention  
21 that information or items that it designated for protection do not qualify for  
22 protection at all, or do not qualify for the level of protection initially asserted, that  
23 Party or non-party must promptly notify all other Receiving Parties that it is  
24 withdrawing the mistaken designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in  
26 this Order (*see, e.g.*, Paragraphs 5.2(c), 5.2(d), and 5.2(f), below), or as otherwise  
27 stipulated or ordered, material that qualifies for protection under this Order must be  
28 clearly so designated before the material is disclosed or produced.



1 Designation in conformity with this Order requires:

2 (a) Hard copy or Paper Materials (apart from transcripts of depositions  
3 or other pretrial or trial proceedings): The Producing Party must affix the legend  
4 “CONFIDENTIAL” or “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES  
5 ONLY” or “HIGHLY CONFIDENTIAL CODE” at the top or bottom of each page  
6 that contains such Protected Material. If the Receiving Party believes a portion of  
7 the page so designated does not contain Protected Material or should be given a  
8 lower level of protection, the Receiving Party may make a request to the Producing  
9 Party that that portion be de-designated. The change in the level of protection may  
10 be indicated by making appropriate markings in the margins of the affected page.

11 (b) Native and/or Other Electronic Materials: All Protected Material  
12 not reduced to hard copy, tangible, or physical form or that cannot be conveniently  
13 designated as set forth in Paragraph 5.2(a) shall be designated by informing the  
14 Receiving Party of the designation in writing, and/or in the load file or other similar  
15 database, table or chart accompanying said production. To the extent the Receiving  
16 Party subsequently generates any copies of this information, whether electronic or  
17 hard copy, it shall ensure that all such copies are designated with the appropriate  
18 confidentiality designations.

19 When documents are produced in electronic form, the Producing Party shall  
20 include a confidentiality designation on the medium containing the documents. If  
21 the medium contains documents in native electronic format, the medium shall  
22 include an electronic database record for each native format file that includes on the  
23 face of the electronic database record the applicable confidentiality designation (if  
24 any) and a document identification or Bates number for the associated document.  
25 When a Receiving Party prints a native format file from such medium, the  
26 Receiving Party shall also print the corresponding electronic database record and  
27 attach it to the native format file so that the native file's confidentiality designation  
28 will be readily apparent to one viewing the file. In the event that a Receiving Party



1 prints a native format file from a medium that has been marked with a  
2 confidentiality designation, but the native file is not accompanied by an electronic  
3 database record or the electronic database record could not be printed, the  
4 Receiving Party shall mark each page of such native file with a  
5 “CONFIDENTIAL” or “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES  
6 ONLY” designation until the native file’s electronic database record may be located  
7 or printed.

8 (c) Documents Made Available for Inspection: Any tangible objects,  
9 documents or electronically stored information (excluding Source Code) made  
10 available only to Outside Counsel for the Receiving Party for initial inspection prior  
11 to the production of selected items shall initially be considered, as a whole, to  
12 constitute “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY”  
13 information and shall be subject to this Protective Order. A Party or non-party that  
14 makes original documents or materials available for inspection need not designate  
15 them for protection until after the inspecting Party has indicated which material it  
16 would like copied and produced.

17 During the inspection and before the designation, all of the material made  
18 available for inspection shall be deemed “CONFIDENTIAL – OUTSIDE  
19 ATTORNEYS’ EYES ONLY.” After Outside Counsel for the inspecting Party has  
20 identified the documents it wants copied and produced, the Producing Party must  
21 determine which documents qualify for protection under this Order, then, before  
22 producing the specified documents, the Producing Party must affix the appropriate  
23 legend (“CONFIDENTIAL,” “CONFIDENTIAL – OUTSIDE ATTORNEYS’  
24 EYES ONLY,” or “HIGHLY CONFIDENTIAL CODE”) at the top or bottom of  
25 each page that contains Protected Material. If the Receiving Party believes a  
26 portion of the page so designated does not contain Protected Material or should be  
27 given a lower level of protection, the Receiving Party may make a request to the  
28 Producing Party that that portion be de-designated. The change in the level of

1 protection may be indicated by making appropriate markings in the margins of the  
2 affected page.

3 (d) Physical Exhibits: The confidential status of a physical exhibit  
4 shall be indicated by placing a label on it with the appropriate confidentiality notice  
5 as described in Paragraph 5.2(a).

6 (e) Written Discovery: In the case of information incorporated in  
7 answers to interrogatories or responses to requests for admission, the appropriate  
8 confidentiality notice as described in Paragraph 5.2(a) shall be placed on each  
9 answer or response that contains Protected Material.

10 (f) Testimony given in deposition: A Party or non-party seeking to  
11 designate testimony under this Order may so identify on the record, before the close  
12 of the deposition, any portions of the testimony that the Party or non-party intends  
13 to designate as "CONFIDENTIAL," "CONFIDENTIAL – OUTSIDE  
14 ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL CODE." A Party  
15 or non-party seeking to designate testimony under this Order may also, up to 30  
16 days following receipt of the transcript from the court reporter, identify, in writing,  
17 the specific portions of the testimony as to which protection is sought and specify  
18 the level of protection being asserted ("CONFIDENTIAL," "CONFIDENTIAL –  
19 OUTSIDE ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL  
20 CODE"). Only those portions of the testimony that are appropriately designated for  
21 protection within the 30 days shall be covered by the provisions of this Order.

22 (g) Information or items produced by other Parties or non-parties  
23 (e.g., documents obtained by third-party subpoenas): If a Party wishes to designate  
24 under this Order, the Party must, shortly after receiving such information or items,  
25 notify all other Parties in writing of the designation, describing the information or  
26 items at issue (e.g., by Bates number) and the level of protection claimed with  
27 respect to such information or items; all other Parties shall then apply the  
28

1 appropriate legend to the information or items in accordance with the preceding  
2 paragraphs, depending on the type of information or item.

3       5.3 Inadvertent Failures to Designate. A Designating Party that  
4 inadvertently fails to mark information or items as “CONFIDENTIAL,”  
5 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY,” or “HIGHLY  
6 CONFIDENTIAL CODE” at the time of production shall be allowed to correct  
7 such failure at any time. In that event, the Designating Party shall provide notice in  
8 writing to all Receiving Parties, accompanied, as necessary, by appropriately  
9 marked substitute copies of such documents. Upon receipt of such notice, a  
10 Receiving Party will take appropriate steps to assure that the previously unmarked  
11 documents are treated as Protected Material in accordance with the provisions of  
12 this Order and will destroy all previously unmarked or mismarked copies of the  
13 information or items.

## 14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15       6.1 Timing of Challenges. Unless a prompt challenge to a Designating  
16 Party’s confidentiality designation is necessary to avoid foreseeable substantial  
17 unfairness, unnecessary economic burdens, or a later significant disruption or delay  
18 of the litigation, a Party does not waive its right to challenge a confidentiality  
19 designation by electing not to mount a challenge promptly after the original  
20 designation is disclosed.

21       6.2 Meet and Confer. A Party that elects to initiate a challenge to a  
22 Designating Party’s confidentiality designation must do so in good faith and must  
23 begin the process by conferring directly with Counsel for the Designating Party. In  
24 conferring, the challenging Party must explain the basis for its belief that the  
25 confidentiality designation was not proper and must give the Designating Party an  
26 opportunity to review the designated material, and, if no change in designation is  
27 offered, to explain the basis for the chosen designation. A challenging Party may  
28 proceed to the next stage of the challenge process only if it has engaged in this meet

1 and confer process first.

2       6.3 Judicial Intervention. A Party that elects to press a challenge to a  
3 confidentiality designation after considering the justification offered by the  
4 Designating Party may file and serve a motion under Local Rules 37-1 and 37-2  
5 (and in compliance with Civil Local Rule 79-5, if applicable) that identifies the  
6 challenged material and sets forth in detail the basis for the challenge. Each such  
7 motion must be accompanied by a competent declaration that affirms that the  
8 movant has complied with the meet and confer requirements imposed in the  
9 preceding paragraph and that sets forth with specificity the justification for the  
10 confidentiality designation that was given by the Designating Party in the meet and  
11 confer dialogue. The burden of persuasion in any such challenge proceeding shall  
12 be on the Designating Party. Until the court rules on the challenge, all parties shall  
13 continue to afford the material in question the level of protection to which it is  
14 entitled under the Designating Party's designation.

15 7. FORM OF PRODUCTION

16       7.1 General Production. Documents reasonably produced as single or  
17 multi-page files must be produced electronically in single or multi-page .TIF format  
18 (depending on whether the document is a single-page document or a multi-page  
19 document) with corresponding OCR information (for hardcopy) or Fulltext extracts  
20 (extracted text information for electronic documents, provided in a separate .txt file)  
21 and accompanying load files tracking document breaks (to be provided in Ringtail,  
22 Concordance, Relativity, or Summation format, at the Receiving Party's request).  
23 There is no general obligation to collect or produce metadata, except the Parties  
24 reserve the right to request specific data for specific documents for good cause. For  
25 documents not amenable to production by TIFF images (e.g. database, spreadsheet,  
26 or media files), the Producing Party may produce documents in native format. For  
27 documents more conveniently reviewed or analyzed in native format, the Receiving  
28 Party may request that documents be produced in native format and such request

1 will not be unreasonably denied.

2       7.2    Production of Excel Files. Excel spreadsheets can be produced in  
3 either the format described in 7.1 above or in native format. If produced in the  
4 format described in 7.1 above, the Receiving Party may also request native versions  
5 of the file which shall be promptly provided. For native spreadsheet productions, a  
6 placeholder page will be put into the .TIF production to represent the spreadsheet  
7 file. The placeholder will have the production ID, confidentiality footer if  
8 appropriate, and the original file name of the produced document. The native  
9 spreadsheet file name shall be prefixed with the document level production ID  
10 corresponding to the ID on the placeholder image for that file.

11       7.3    Production of Source Code. Production of Source Code is detailed  
12 below in Section 8.5 entitled “Procedures for Production and Review of Source  
13 Code.”

14       7.4    Other Production Documents. Documents not amenable to production  
15 pursuant to paragraphs 7.1 - 7.3 shall be produced in native format with a  
16 placeholder page placed in the “.TIF” production to represent the native file. The  
17 placeholder will have the production ID, confidentiality footer if appropriate, and  
18 the original file name of the produced document. The native file name shall be  
19 prefixed with the document level production ID corresponding to the ID on the  
20 placeholder image for that file.

## 21   8.    ACCESS TO AND USE OF PROTECTED MATERIAL

22       8.1    Basic Principles. A Receiving Party may use Protected Material that is  
23 disclosed or produced by another Party or by a non-party in connection with this  
24 case only for prosecuting, defending, or attempting to settle this litigation. Such  
25 Protected Material may be disclosed only to the categories of persons and under the  
26 conditions described in this Order. When the litigation has been terminated, a  
27 Receiving Party must comply with the provisions of Section 12, below (FINAL  
28 DISPOSITION). Nothing in this Order restricts how a Party may use or to whom a

1 Party may disclose its own Disclosure or Discovery Material, including its own  
2 Protected Material. Protected Material must be stored and maintained by a  
3 Receiving Party at a location and in a secure manner that ensures that access is  
4 limited to the persons authorized under this Order.

5 8.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
6 otherwise ordered by the Court or permitted in writing by the Designating Party,  
7 any information or item designated “CONFIDENTIAL” and information contained  
8 therein shall be available only to:

9 (a) the Receiving Party’s Outside Counsel of record in this action, as  
10 well as employees and vendors of said Counsel to whom it is reasonably necessary  
11 to disclose the information for this litigation;

12 (b) Experts of the Receiving Party (1) to whom disclosure is  
13 reasonably necessary for this litigation, (2) who have signed the  
14 “Acknowledgement and Agreement to Be Bound” (Exhibit A), (3) who are  
15 independent outside witnesses or consultants (i.e., not employees of a party or of a  
16 competitor of a party, and who at the time of retention are not anticipated to  
17 become employees of a party or a competitor of a party) and (4) as to whom the  
18 procedures set forth in Paragraph 8.5, below, have been followed;

19 (c) the Court and its personnel;

20 (d) independent legal translators retained to translate in connection  
21 with this action, court reporters, videographers, their staffs, and persons or entities  
22 that provide litigation support services such as photocopying, preparing exhibits or  
23 demonstrations, organizing, storing, retrieving data in any form or medium;  
24 provided that all such vendors agree to maintain the confidentiality of documents  
25 pursuant to this Protective Order;

26 (e) during their depositions, witnesses in the action to whom disclosure  
27 is reasonably necessary and who have signed the “Acknowledgement and  
28 Agreement to Be Bound” (Exhibit A). However, the Producing Party may object to

1 the disclosure of Protected Material based on a good faith concern about potential  
2 harm resulting from such disclosure to any witness under this Paragraph 8.2(e) at  
3 any time leading up to and during the deposition, provided that the witness is not a  
4 current employee of the Producing Party, has not previously viewed, sent, or  
5 received the Protected Material, and is not otherwise permitted to receive the  
6 Protected Material under this Order. If the Producing Party so objects, the  
7 Protected Material shall not be disclosed to the witness, unless and until the  
8 Producing Party consents to disclosure or pursuant to a court order.

9 (f) the author of the document or the original source of the information  
10 or any actual or intended recipients of the document;

11 (g) witnesses (whether at deposition or trial) if it can be established  
12 that the witness has seen the material before or otherwise knows the material;

13 (h) any mediator who is assigned to hear this matter, and his or her  
14 staff, subject to their agreement to maintain confidentiality to the same degree as  
15 required by this Protective Order; and

16 (i) up to three in-house counsel of a Defendant, who have signed the  
17 "Acknowledgement and Agreement to Be Bound" (Exhibit A), *except* that the  
18 above-identified in-house counsel of a Defendant shall not receive access to or  
19 disclosure of Protected Information of another Defendant, absent the written  
20 consent of the Producing Party (for purposes of this Protective Order, "Defendant"  
21 refers to a party (or group of parties) sued by Plaintiff herein, and not a  
22 counterclaim Defendant).

23 (j) Up to four officers, directors or employees of a Party who have  
24 signed the form attached hereto as Exhibit A, except that the above-identified  
25 officers, directors or employees of a Defendant shall not receive access to or  
26 disclosure of Protected Information of another Defendant, absent the written  
27 consent of the Producing Party (for purposes of this provision, "Defendant" refers  
28 to a party sued by Plaintiff herein, and not a counterclaim Defendant).



1           8.3    Disclosure of “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES  
2 ONLY” Information. Unless otherwise ordered by the Court or permitted in  
3 writing by the Designating Party, any information or item designated  
4 “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” and information  
5 contained therein shall be available only to the persons or entities listed in  
6 paragraphs 8.2(a) through (h), subject to any terms set forth or incorporated therein  
7 and not any person or entity listed in paragraph 8.2(a)(i) or(j). Under no  
8 circumstances shall the defendants’ “CONFIDENTIAL – OUTSIDE  
9 ATTORNEYS’ EYES ONLY” Information be disclosed to Todd E. Fitzsimmons  
10 or any individual having an ownership interest or inventorship interest in Plaintiff  
11 or the patent-in-suit.

12           8.4    Disclosure of “HIGHLY CONFIDENTIAL CODE.” Unless otherwise  
13 ordered by the Court or permitted in writing by the Designating Party, a Receiving  
14 Party may disclose any information or item designated “HIGHLY  
15 CONFIDENTIAL CODE” only to:

16                   (a) the Receiving Party’s Outside Counsel of record in this action, as  
17 well as employees of said Counsel to whom it is reasonably necessary to disclose  
18 the information for this litigation (except that this shall exclude Todd E.  
19 Fitzsimmons or any other individual having an ownership interest or inventorship  
20 interest in the Plaintiff or patents-in-suit);

21                   (b) Experts (1) to whom disclosure is reasonably necessary for this  
22 litigation, (2) who have signed the “Acknowledgement and Agreement to Be  
23 Bound” (Exhibit A), and (3) as to whom the procedures set forth in Paragraph 8.5,  
24 below, have been followed;

25                   (c) the Court and its personnel;

26                   (d) court reporters, their staffs,

27                   (e) and Professional Vendors to whom disclosure is reasonably  
28 necessary for this litigation and who have signed the “Acknowledgement and

1 Agreement to Be Bound” (Exhibit A);

2 (f) during their depositions, witnesses in the action to whom disclosure  
3 is reasonably necessary and who have signed the “Acknowledgement and  
4 Agreement to Be Bound” (Exhibit A). However, the Producing Party may object to  
5 the disclosure of Protected Material based on a good faith concern about potential  
6 harm resulting from such disclosure to any witness under this Paragraph 8.4(f) at  
7 any time leading up to and during the deposition, provided that the witness is not a  
8 current employee of the Producing Party and is not otherwise permitted to receive  
9 the Protected Material under this Order. If the Producing Party so objects, the  
10 Protected Material shall not be disclosed to the witness, unless and until the  
11 Producing Party consents to disclosure or pursuant to a court order;

12 (g) an employee of the Producing Party or the author of the code or the  
13 original source of the information or any actual or intended recipients of the code;  
14 and

15 (h) witnesses (whether at deposition or trial) if it can be established  
16 that the witness has seen the material before or otherwise knows the material.

17 8.5 Procedures for Approving Disclosure of “CONFIDENTIAL –  
18 OUTSIDE ATTORNEYS’ EYES ONLY,” and “HIGHLY CONFIDENTIAL  
19 CODE” Information or Items to Experts.

20 (a) Unless otherwise ordered by the Court or agreed in writing by the  
21 Designating Party, a Receiving Party that seeks to disclose to an Expert any  
22 information or items that have been designated “CONFIDENTIAL – OUTSIDE  
23 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL CODE” first must  
24 make a written request to the Designating Party that (1) identifies the specific  
25 categories, *i.e.*, “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY,” or  
26 “HIGHLY CONFIDENTIAL CODE,” of designated information or items that the  
27 Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full  
28 name of the Expert and the city and state of his or her primary residence, (3)

1 attaches a copy of the Expert's current resume, (4) identifies the Expert's current  
2 employer(s), (5) identifies each person or entity from whom the Expert has received  
3 compensation for work in his or her areas of expertise or to whom the expert has  
4 provided professional services at any time during the preceding five years, and (6)  
5 identifies (by name and number of the case, filing date, and location of court) any  
6 litigation in connection with which the Expert has provided any professional  
7 services during the preceding five years. The parties acknowledge that this  
8 disclosure itself may be designated as "CONFIDENTIAL – OUTSIDE  
9 ATTORNEYS' EYES ONLY."

10 (b) A Party that makes a request and provides the information  
11 specified in the preceding paragraph may disclose the subject Protected Material to  
12 the identified Expert unless, within five court days of delivering the request, the  
13 Party receives a written objection from the Designating Party. Any such objection  
14 must set forth in detail the grounds on which it is based.

15 (c) A Party that receives a timely written objection must meet and  
16 confer with the Designating Party to try to resolve the matter by agreement. If no  
17 agreement is reached, the Party seeking to make the disclosure to the Expert may  
18 file a motion as provided in Local Rules 37-1 and 37-2 (and in compliance with  
19 Civil Local Rule 79-5, if applicable) seeking permission from the court to do so.  
20 Any such motion must describe the circumstances with specificity, set forth in  
21 detail the reasons for which the disclosure to the Expert is reasonably necessary,  
22 assess the risk of harm that the disclosure would entail and suggest any additional  
23 means that might be used to reduce that risk. In addition, any such motion must be  
24 accompanied by a competent declaration in which the movant describes the parties'  
25 efforts to resolve the matter by agreement (i.e., the extent and the content of the  
26 meet and confer discussions) and sets forth the reasons advanced by the  
27 Designating Party for its refusal to approve the disclosure. In any such proceeding,  
28 the Party opposing disclosure to the Expert shall bear the burden of proving that the

1 risk of harm that the disclosure would entail (under the safeguards proposed)  
2 outweighs the Receiving Party's need to disclose the Protected Material to its  
3 Expert.

4 8.6 Procedures for Production and Review of Source Code. A Receiving  
5 Party's access to a Producing Party's Source Code shall be controlled and limited to  
6 those individuals with access under this Order to material designated "HIGHLY  
7 CONFIDENTIAL CODE." Under no circumstances shall a Receiving Party  
8 provide copies of any portion of a Producing Party's source code to Todd E.  
9 Fitzsimmons or any other person having an ownership interest or inventorship  
10 interest in Plaintiff or the patents-in-suit. Each time counsel for the Receiving Party  
11 requests a review of source code on the Source Code Computer, it must give  
12 reasonable advance notice to the counsel for the Producing Party that it will be  
13 sending individual(s) authorized to review the source code made available on the  
14 Source Code Computer. For purposes of this provision, three (3) days is reasonable  
15 advance notice. Unless otherwise ordered by the Court or agreed to in writing by  
16 the Parties, any Source Code will be subject to the following provisions:

17 (a) Each Party's Source Code, produced in electronic format on the  
18 "Source Code Computer," shall be made available for inspection at a secure  
19 room in the law firm offices of the party's outside counsel in Los Angeles  
20 County or Orange County, California.

21 (b) Proper identification of all authorized persons shall be provided  
22 prior to any access to secure room containing the Source Code Computer.  
23 Proper identification is hereby defined as a photo identification card  
24 sanctioned by the government of a U.S. state, by the United States federal  
25 government, or by the nation state of the authorized person's current  
26 citizenship. Access to the secure room containing the Source Code Computer  
27 may be denied, at the discretion of Producing Party, to any individual who  
28 fails to provide proper identification.

1 (c) The Receiving Party may install any reasonably required analysis  
2 tools on the Source Code Computer necessary or helpful to assist in  
3 analyzing the source code.

4 (d) The Receiving Party may designate a reasonable number of pages  
5 of the Source Code for printing. Within two business days following such  
6 designation, the Producing Party must produce the designated Source Code  
7 to the Receiving Party on sequentially bates numbered pages prefixed with  
8 the Producing Party's name (or recognizable abbreviation) with the legend  
9 "HIGHLY CONFIDENTIAL CODE."

10 (e) Absent consent of the Producing Party, no outside electronic  
11 devices, including but not limited to laptops, floppy drives, zip drives,  
12 cellular telephones, personal digital assistants (PDAs), Blackberries,  
13 cameras, voice recorders, Dictaphones or other similar electronic devices be  
14 permitted inside the secure room containing the Source Code Computer.

15 (f) Access to and review of the source code shall be strictly for the  
16 purpose of investigating the claims and defenses at issue in the above-styled  
17 case. No person shall review or analyze any source code for purposes  
18 unrelated to this case, nor may any person use any knowledge gained as a  
19 result of reviewing source code in this case in any other pending or future  
20 dispute, proceeding, or litigation.

21 9. PROSECUTION BAR

22 Absent written consent from the Producing Party, any attorney for or  
23 representing Plaintiff, whether Plaintiff's Outside Counsel or Inside Counsel, who  
24 obtains, receives, has access to, or otherwise learns, in whole or in part, of any  
25 party's "CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY"  
26 information of a technical nature or "HIGHLY CONFIDENTIAL CODE"  
27 information shall not be involved in the prosecution of patents or patent  
28 applications of Plaintiff or its acquirer, successor, predecessor, or other affiliate

(including any person having an ownership interest or inventorship interest in Plaintiff) relating to the accused technology of systems and methods for processing, verifying, or authenticating mail identification data, including any patent or application claiming priority to or otherwise related to U.S. Patents 7,814,032, 7,818,268, and 8,073,787, before any foreign or domestic agency, including the United States Patent and Trademark Office (“the Patent Office”) during the pendency of this action and for two (2) years after its conclusion against all Defendants, including any appeals. For purposes of this paragraph, “prosecution” includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims. To avoid any doubt, “prosecution” as used in this paragraph does not include representing a party challenging or defending a challenge to U.S. Patents 7,814,032, 7,818,268, and 8,073,787 (including, but not limited to, a reissue protest, ex parte reexamination or inter partes reexamination). This Prosecution Bar shall begin when access to the “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL CODE” information is first received by the affected individual and shall end two (2) years after final termination of this action.

10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action by another Designating Party as “CONFIDENTIAL,” “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL CODE,” the Receiving Party must so notify the Designating Party, in writing immediately and in no event more than fourteen (14) court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

1 The Receiving Party also must immediately inform in writing the party who  
2 caused the subpoena or order to issue in the other litigation that some or all the  
3 material covered by the subpoena or order is the subject of this Order. In addition,  
4 the Receiving Party must deliver a copy of this Order promptly to the party in the  
5 other action that caused the subpoena or order to issue.

6 The purpose of imposing these duties is to alert the interested parties to the  
7 existence of this Order and to afford the Designating Party in this case an  
8 opportunity to try to protect its confidentiality interests in the court from which the  
9 subpoena or order issued. The Designating Party shall bear the burdens and the  
10 expenses of seeking protection in that court of its confidential material – and  
11 nothing in these provisions should be construed as authorizing or encouraging a  
12 Receiving Party in this action to disobey a lawful subpoena issued in another action  
13 or a lawful order issued by another court or administrative agency.

14 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
16 Protected Material to any person or in any circumstance not authorized under this  
17 Order, the Receiving Party must immediately (a) notify in writing the Designating  
18 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of  
19 the Protected Material, (c) inform the person or persons to whom unauthorized  
20 disclosures were made of all the terms of this Order, and (d) request such person or  
21 persons to execute the “Acknowledgment and Agreement to Be Bound” that is  
22 attached hereto as Exhibit A. Unauthorized or inadvertent disclosure does not  
23 change the status of Protected Material or waive the right to hold the disclosed  
24 document or information as Protected Material.

25 **12. FILING PROTECTED MATERIAL**

26 In accordance with Local Rule 79-5.1, if any papers to be filed with the  
27 Court contain information and/or documents that have been designated as  
28 “Confidential” or “Confidential - Attorneys’ Eyes Only” or “Highly Confidential



1 Code,” the proposed filing shall be accompanied by an application to file the papers  
2 or the portion thereof containing the designated information or documents (if such  
3 portion is segregable) under seal; and the application shall be directed to the judge  
4 to whom the papers are directed. For motions, the parties shall publicly file a  
5 redacted version of the motion and supporting papers. To the extent the assistance  
6 of a Designating Party is necessary to an application to file under seal, the  
7 Designating Party agrees to provide reasonable assistance.

8 13. FINAL DISPOSITION

9 Unless otherwise ordered or agreed in writing by the Producing Party, within  
10 sixty days after the final termination of this action, each Receiving Party must  
11 securely destroy all Protected Material or return all Protected Material to the  
12 Producing Party, at the Producing Party’s option. As used in this subdivision, “all  
13 Protected Material” includes all copies, abstracts, compilations, summaries or any  
14 other form of reproducing or capturing any of the Protected Material.

15 Whether the Protected Material is returned or destroyed, the Receiving Party  
16 must submit a written certification to the Producing Party (and, if not the same  
17 person or entity, to the Designating Party) by the sixty day deadline that all the  
18 Protected Material was securely returned or destroyed and that affirms that the  
19 Receiving Party has not retained any copies, abstracts, compilations, summaries or  
20 other forms of reproducing or capturing any of the Protected Material.

21 Notwithstanding this provision, Counsel are entitled to retain archival copies  
22 of all pleadings, motion papers, transcripts, legal memoranda, correspondence or  
23 attorney work product, even if such materials contain Protected Material.

24 14. MISCELLANEOUS

25 14.1 Right to Further Relief. Nothing in this Order abridges the right of any  
26 person to seek a modification by the Court in the future.

27 14.2 Right to Assert Other Objections. By stipulating to the entry of this  
28 Order, no Party waives any right it otherwise would have to object to disclosing or

1 producing any information or item on any ground not addressed in this Order.

2 Nothing in this Order shall be construed as requiring disclosure of privileged  
3 materials, materials subject to protection under the work product doctrine, or  
4 materials which are otherwise beyond the scope of permissible discovery.

5 Similarly, no Party waives any right to object on any ground to the use in evidence  
6 of any of the material covered by this Order.

7       14.3 Inadvertent Production of Privileged Information. Nothing in this  
8 Order shall require production of documents, information or other material that a  
9 Party contends is protected from disclosure by the attorney-client privilege, the  
10 work product doctrine, or other privilege, doctrine, or immunity. If material subject  
11 to a claim of attorney-client privilege or work-product immunity is inadvertently  
12 produced, such production shall in no way prejudice or otherwise constitute a  
13 waiver of, or estoppel as to, any claim of privilege or work-product immunity for  
14 such information. Pursuant to Federal Rule of Civil Procedure 26(b)(5), the party  
15 making the claim may notify any party that received the information of the claim  
16 and the basis for it. After being notified, a party must promptly return, sequester, or  
17 securely destroy, at the Producing Party's option, the specified information and any  
18 copies it has; must not use or disclose the information until the claim is resolved;  
19 must take reasonable steps to retrieve the information if the party disclosed it before  
20 being notified; and may promptly present the information to the Court under seal  
21 for a determination of the claim. The Producing Party must preserve the  
22 information until the claim is resolved. The Parties agree that employing electronic  
23 keyword searching to identify and prevent disclosure of privileged material  
24 constitutes "reasonable steps to prevent disclosure" under FRE 502(b)(2).

25       14.4 Federal Rule of Evidence 502(d) and (e). The production of any  
26 discovery material by any party, whether inadvertent or not, shall be without  
27 prejudice to any subsequent claim by the Producing Party that such discovery  
28 material is privileged or attorney-work product, and shall not be deemed a waiver

1 of any such privilege or protection in either the litigation pending before the Court,  
2 or any other federal or state proceeding.

3 14.5 Transmission and Communication of Protected Material. Nothing in  
4 this Order shall prohibit the transmission or communication of  
5 “CONFIDENTIAL” or “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES  
6 ONLY” information or items, or printed copies of “HIGHLY CONFIDENTIAL  
7 CODE” between or among qualified recipients:

8 (a) All Protected Material can be transmitted and communicated by e-mail,  
9 However, if the material is designated as HIGHLY CONFIDENTIAL CODE, it  
10 may only be transmitted by email if the amount of Protected Material is reasonably  
11 limited;

12 (b) by hand-delivery;

13 (c) in sealed envelopes or containers via certified mail, return receipt  
14 requested, or an established freight, delivery or messenger service; or

15 (d) by telephone, facsimile, or other electronic transmission system; where,  
16 under the circumstances, there is no reasonable likelihood that the transmission will  
17 be intercepted or misused by any person who is not a qualified recipient;

18 (e) in a court pleading or report, if the amount of Protected Material is  
19 reasonably limited.

20 14.6 Termination of Matter and Retention of Jurisdiction. The Parties agree  
21 that the terms of this Protective Order shall survive and remain in effect after the  
22 Final Disposition of this action. The Court shall retain jurisdiction after Final  
23 Disposition of this action to hear and resolve any disputes arising out of this  
24 Protective Order.

1           14.7 Successors. This Order shall be binding upon the Parties hereto, their  
2 attorneys, and their successors, executors, personal representatives, administrators,  
3 heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents,  
4 retained consultants and experts, and any persons or organizations over which they  
5 have direct control.

6  
7 APPROVED AS TO FORM AND CONTENT:

8 Dated: January 28, 2013

9 O'MELVENY & MYERS LLP

10 By: /s/ Vision L. Winter  
11 Vision L. Winter Attorney for SECURED  
12 MAIL SOLUTIONS, LLC

13  
14 FOX ROTHSCHILD LLP

15 By: /s/ Lena Bacani  
16 Lena Bacani  
17 Attorney for Defendants Advanced  
18 Image Direct, LLC, Vertis Holdings,  
19 Inc., Vertis, Inc., and Envelopes  
20 Unlimited, Inc.

21 MORGAN, LEWIS & BOCKIUS LLP

22 By: /s/ Mario Moore  
23 Mario Moore  
24 Attorney for Harte-Hanks Defendants  
25  
26  
27  
28

**ATTESTATION**

I hereby attest that concurrence in the filing of this document has been obtained from Lena Bacani and Mario Moore.

/s/ Vision L. Winter

Attorneys for Plaintiff  
SECURED MAIL SOLUTION, LLC

Dated: February 11, 2013

**EXHIBIT A****ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full  
 address], declare under penalty of perjury that I have read in its entirety and  
 understand the Stipulated Protective Order that was issued by the United States  
 District Court for the Central District of California on in the case of *Secured Mail  
 Solutions, LLC v. Advanced Image Direct, LLC, et al.*, C.D. Cal. Case No. SACV  
 12-01090 DOC(MLGx) (consolidated for pretrial purposes with Case No. SACV  
 12-01118). I agree to comply with and to be bound by all the terms of this,  
 Stipulated Protective Order and I understand and acknowledge that failure to so  
 comply could expose me to sanctions and punishment in the nature of contempt. I  
 solemnly promise that I will not disclose in any manner any information or item  
 that is subject to this Stipulated Protective Order to any person or entity except in  
 strict compliance with the provisions of this Order. I further agree to submit to the  
 jurisdiction of the United States District Court for the Central District of California  
 for enforcing the terms of this Stipulated Protective Order, even if such  
 enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

[printed name]

Signature: \_\_\_\_\_

[signature]

